

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE, JURISDICTION
CRIMINAL WRIT PETITION NO.1506 OF 2005

Aarif @ Yasir Ahmed Sattar Ahmed	)	
Shaikh, Age: 22 years,	)	
Residing at Waghoba Nagar,	)	
20 Padpatthi, Main Railway Line,	)	
Kalwa (E), Dist.Thane.	)	
(At present detained at Nasik Road,	)	
Central Prison at Nasik.)	)	PETITIONER.

Versus

1. Shri.D.Sivanandan,	)	
Commissioner of Police,	)	
Thane.	)	
	)	
2. The State of Maharashtra	)	
	)	
3. The Superintendent Nasik	)	
Road, Central Prison, Nasik.	)	RESPONDENTS.

Mr. U.N.Tripathi, Advocate for the Petitioner.

Mr. D.S. Mhaispurkar, APP for the State.

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CORAM : D.G.DESHPANDE &
SMT.V.K.TAHILRAMANI, JJ.

DATED : MARCH 09, 2006.

ORAL JUDGMENT (PER TAHILRAMANI,J.)

1. Through this Petition under Article 226 of the Constitution of India, the petitioner-detenu has impugned the order of detention dated 21st April, 2005 passed by respondent No.1 Shri D.Shivnandan, Commissioner of Police, Thane. By the said order, the

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detenu came to be detained under Sub-Section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 (hereinafter referred to as the MPDA Act)

. The detention order alongwith grounds of detention dated 21st April, 2005 was served on the petitioner-detenu on 26th April, 2005. True copies of detention order and its translation are annexed as Annexure 'A', and true copies of the grounds of detention alongwith its translation are annexed as Annexure 'B' to this Petition.

2. A perusal of the grounds of detention would show that the impugned detention order is founded on three C.Rs i.e. C.R.No.284 of 2004 of Vartaknagar Police Station under Sections 395, 397 of IPC R/w Sections 3, 25(a), (b) of Indian Arms Act; C.R.No.436 of 2004 of Chembur Police Station under Sections 395, 397, 452, 427 of IPC R/w Sections 3, 25 of Indian Arms Act; and C.R.No.5 of 2005 of Thanenagar Police Station under Sections 399, 400 of IPC R/w Sections 3(25), 4(25) of Indian Arms Act and Sections 37(1), 135 of Bombay Police Act. C.R.No.284 of 2004 was registered on 27.12.2004, C.R.No.436 of 2004 was registered on

30.12.2004, and C.R.No.5 of 2005 was registered on 03.01.2005.

. The facts relating to C.R.No.284 of 2004 are that, "Nakoda Jewellers" is situated at Pawar Nagar, Thane. On 27.12.2004, the petitioner alongwith other gang-members went near "Nakoda Jewellers". The other gang-members, who were armed, went into the jewellery shop. The petitioner, who was driving the vehicle in which all the gang members went near the jewellery shop, was told to keep the vehicle in ready position infront of the jewellery shop, which was proposed to be looted. Thereafter, jewellery shop came to be looted at the point of deadly weapons. Due to noise, the neighbouring shopkeepers came forward to see what had happened. At that time one of the co-accused Jabirali threatened them at the point of firearm, hence they all retreated, returned to their shops, put down the shutters and confined themselves inside their shops. The women and school going children passing by the road, noticed the incident and they ran helter skelter, due to fear. Due to dacoity in broad day light in busy locality, the atmosphere become tense. Immediately after the incident was over, the gang members came and sat in the car, which the detenu kept in running position, and they ran away with the gold ornaments of

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the value of Rs.4,28,000/-.

. The facts relating to C.R.No.436 of 2004 are that Cell Phone Shop was looted at the point of deadly weapons. The role played by the detenu in this case was similar to that played by him in the earlier case.

. As far as C.R.No.5 of 2005 is concerned, an information was received that a gang of seven to eight dacoits were going to assemble at CIDCO Bus Stop, near Manish Hotel, with an intention to commit dacoity at some jewellery shop. On receipt of information, Police went to the spot. They found that detenu and other gang members had gathered there with an intention to commit dacoity and the associates of detenu were armed with deadly weapons. The detenu and his other gang members came to be apprehended. At that time, the detenu was found on the driving seat of the Car in which he and other gang members have found.

3. We have heard Mr.Tripathi learned Advocate for the petitioner and Mr.Mhaispurkar learned APP for the State. Although, in this Writ Petition many grounds have been pleaded, Mr.Tripathi has only pressed two grounds i.e. Ground No.6-A and Ground No.6-E. Ground

No.6-A is as under :

"6-A. The petitioner says and submits that the order of detention is unjustified and unwarranted since the petitioner was already in Judicial Custody on the date of order passed i.e. on 21-4-05. The petitioner says and submits that being in custody he was already prevented from acting in any manner prejudicial to the maintenance of Public Order. The petitioner has never applied for bail before any Court of Law. More particularly looking to the seriousness of the case i.e. armed dacoity, it is not possible to avail bail under normal law of land. The petitioner says and submits that there are no material before the detaining authority to come to such conclusion that there is imminent possibility of the release of the petitioner in near future. This shows total non-application of mind of the detaining authority. The order of detention is illegal and bad in law, ought to be quashed and set aside."

. The said ground has been replied to by the Detaining Authority in Para-8 of his return. Although, the reply is in detail, briefly stated, it shows that the detaining authority was aware of the fact that the detenu was already in custody in the three C.Rs.. The reply shows that looking to the role played by the detenu i.e. he was assigned the job of keeping the vehicle in a ready position so as to enable the associates of the detenu to flee after collecting the booty, and looking to the fact that there was no recovery at the instance of the detenu nor was he identified by any of the witnesses in C.R.No.284 of

2004, the detaining authority was of the opinion that the detenu was likely to be released on bail in the near future. Looking to the criminal activities of the detenu, the detaining authority was subjectively satisfied that detenu would continue to indulge in similar activities in future and hence it was necessary to detain him. The compelling reasons justifying the detention have been spelled-out by the detaining authority in the grounds of detention and in his reply.

4. Mr.Tripathi submitted that the detenu was in custody and the apprehension that the detenu was likely to be released from custody was not supported by any material. Mr.Tripathi submitted that in such case, the detention order is likely to be set-aside. Mr.Tripathi placed reliance on the decision of the Apex Court in the Case of **"Dharmendra Suganchand Chelawat & Anr. Vs. Union of India & Ors.,"** reported in AIR 1990 Supreme Court 1196. Mr.Tripathi placed reliance on Para-19 of the said decision, which reads as under :

"19. The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i)the detaining authority was aware of the fact that the detenu is already in detention and (ii)there was compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons"

in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

5. Thus, if the case of Dharmendra Chelawat(Supra) on which Mr.Tripathi placed reliance, is considered, in the present case, it is seen that the detaining authority was aware that the detenu was in custody. The compelling reasons justifying the passing of detention order are set-out in the grounds of detention. The detaining authority has set-out the reasons why he apprehended that the detenu was likely to be released from custody in the near future; and taking into account the criminal activities of the detenu, the detaining authority was subjectively satisfied that if the detenu was released from custody, he would again indulge in activities which are prejudicial to the maintenance of Public Order, and hence it was necessary to detain him in order to prevent him from engaging in such activities in future. We find that all the criteria set out in para 19 of Dharmendra's case is met in the present case.

. Moreover, it is seen that in the case of Dharmendra Chelawat(Supra), the detenu was involved in a case under the NDPS Act. The NDPS Act contains very stringent provisions as far as the bail is concerned. Section 37 of the NDPS Act reads as under :

"[37. Offences to be cognizable and non-bailable.-- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) --

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or Section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor oppose the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]"

. Thus, Section 37 of NDPS Act provides for additional fetters as far as bail is concerned. As far

as the offences under IPC are concerned, the provisions of IPC are not as stringent as those under the NDPS Act. Moreover, in the case of Dharmendra Chelawat, the detenu had already preferred an application for bail, which had been rejected just a few days before passing of the detention order. As stated earlier, the detenu in the present case is involved in Cases under IPC only, where the provisions are not so stringent. Moreover, he had not preferred any application for bail till the time that the detention order was passed. In such case, it would be reasonable to presume that the detenu would prefer an application for bail in the near future specially looking to the role of the petitioner in the three cases mentioned in the grounds of detention. Thus, the case of detenu in case of Dharmendra Chelawat cannot be equated with that of the present detenu.

6. Mr.Tripathi also placed reliance on decision of Division Bench of this Court in the Case of **"Smt.Kamlabai Kalicharan Yadav Vs. State of Maharashtra & Anr."** reported in **2001 Cri.L.J.452**. He placed reliance on Para 6 of the said decision, wherein it is observed that there was no material before the detaining authority that detenu was likely to be released on bail. Mr.Tripathi submitted that in the

said case also the detenu had not applied for bail, so also, in the present case the detenu has not applied for bail in any of the three cases. Hence, there was no material before the detaining authority to come to the conclusion that detenu was likely to be released on bail.

7. As far as the case of detenu in Kamlabai Yadav's case is concerned, it is seen that the said case was under Sections 368 and 302 of IPC. Obviously, the role of the detenu in the said case, which was under Section 302 of IPC, could not be said to be similar to that of the detenu in the present case. Looking to the fact that the detenu in the case of Kamlabai (Supra) was involved in a case under Section 302 of IPC and looking to the fact that he had not preferred an application for bail and other facts of the case, the Court came to the conclusion, on the peculiar facts of the case, that the detenu was not likely to be released on bail.

. The role of the detenu in the present case is comparatively minor in nature i.e. he has not actually taken part in entering the premises and committing dacoity, but, his role was to act as a driver and to keep the car in running position to facilitate his gang-members to run away from the scene of crime. The

detenu was not armed with any weapon. There is no recovery of any weapon at the instance of the detenu. Infact, the last case i.e. in C.R.No.5 of 2005 which is under Sections 399 and 400 of IPC, the offences are not even punishable with death or life imprisonment. As far as C.R.No.284 of 2004 is concerned, the detenu was not identified by any witnesses in the said case. Moreover no property was recovered at his instance in the said case. In such case, in our opinion, looking to the role of detenu, the apprehension of the detaining authority that the detenu would be released on bail in the near future is a very reasonable apprehension.

8. Thereafter, Mr.Tripathi submitted that the detenu is involved in Cases under Sections 395 and 397 of IPC. In other cases, wherein the detenu was in custody in Cases under Sections 395 and 397 of IPC, this Court came to conclusion that it was reasonable to conclude that there was no cogent material on the basis of which the detaining authority could have inferred that the detenu was likely to be released from custody in the near future. Looking to the role of the detenu and the facts of the case, this Court held that there was no cogent material before the detaining authority to come to the conclusion that the detenu was likely to

be released from custody. In support of the above submission, Mr.Tripathi placed reliance on the decision of Our Court dated 28th February, 2002 in Criminal Writ Petition No.1536 of 2001 in the case of **"Shri Asit Sadhan Mandal Vs. Shri M.N.Singh and Ors."**

9. As far as the case of Asit Mandal(Supra) is concerned, on which Mr.Tripathi placed reliance, it is seen that the role of the detenu therein was that the detenu was armed with a deadly weapon like Chopper. Detenu placed the chopper on the neck of Mr.Lalsing and thereafter snatched gold. Looking to these facts, this Court came to the conclusion that when the detenu was in custody for nearly four and half months and he had not preferred application for bail, it would be reasonable to conclude that there was no cogent material before the detaining authority to infer that the detenu was likely to be released from custody in the near future.

. However, as already observed by us, the role of the present detenu is very different. His role cannot be equated with the role of the detenu in the other case. Looking to the role of the present detenu, in our opinion, it was reasonable for the detaining authority to apprehend that the detenu would be likely

to be released on bail. The fact that this apprehension was very reasonable and valid is borne-out from the fact that after the detention order was passed the detenu has been released on bail in two out of the three cases i.e. C.r.No.284 of 2004 and C.R.No.5 of 2005. In such a factual matrix, we have no reservations in holding that ground No.6-A is devoid of substance.

10. The second ground which has been urged by Mr.Tripathi i.e. Ground No.6-E is as under :

"6-E. The petitioner says and submits that the detenu is a Muslim by religion and hails from the state of Uttar Pradesh. The detenu's mother tongue is Hindi. The detenu is a driver by profession and has studied a little. The detenu does not know any other language but Hindi only. It is therefore the detaining authority has furnished the Hindi translation of the order, grounds and other documents of the compilation in Hindi duly certified as true translation. The petitioner says and submits that in fact the detention as well as the grounds of detention are not true and correct translation of their counter part English verse. The petitioner says and submits that furnishing wrong translation of the order of detention and grounds of detention amounts to non-communication of the grounds of detention. As such the first facet of Art.22(5) of the Constitution is violated. The petitioner further submits that as a result of furnishing wrong translation to the detenu he is confused, misled and is deprived from making effective representation and exercise his right as guaranteed under Art.22 (5) of the Constitution, of India. As such with both the facets of Art.22 (5) of the Constitution of India is violated. The order of detention is illegal and bad in law ought to be quashed and set aside. The following are the major mistakes in the Hindi verse of the order of detention and the

grounds of detention.

FIRSTLY in the Hindi verse of the order of detention, the very crucial word "Public Order" is wrongly translated as only whose English meaning is only "Order" and not Public Order. Law is well settled that it is only for disturbance of Public such Order of detention can be passed.

SECONDLY Para No.3 of the grounds of detention, the paragraph starting from "your involvement to the existing law of land" is wrongly translated which do not convey true and faithful meaning of its counterpart English verse.

THIRDLY the very crucial paragraphs of the grounds of detention i.e. para No.5 and 6 of the grounds of detention wherein the subjective satisfaction of the detaining authority is recorded are not the true and correct translation of their counterpart English verse. Conveying diametrically opposite meaning sowing the past and not the satisfaction of the detaining authority. As a result of lot of variance the detenu is confessed(confused) and not able to make effective representation. "

. Mr.Tripathi has pointed out that the detention order states that the said detention order has been issued with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of Public Order. However, in the Hindi translation of the said sentence in the order of detention, the words "Public Order" are only translated as "....." (suvyavastha) Mr.Tripathi has contended that "suvyavastha" only means 'Order'and not 'Public Order' and hence the translation supplied to the detenu is a wrong translation. Mr.Tripathi contended that the main

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reason for issuing the detention order was to maintain Public Order. However, this very essential ingredient under the Act, i.e. Public Order, has been wrongly translated in Hindi translation of the detention order, which has been supplied to the detenu. Mr.Tripathi has drawn our attention to Article 22(5) of the Constitution of India. Article 22(5) of the Constitution of India, reads as under :

"22. Protection against arrest and detention in certain cases :

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

11. We have perused the Hindi translation of the detention order which is filed at Page 14 of the petition and we find that the word "public" is not there.

. The question is, whether the absence of the word 'public' in the copy of the Hindi translation of the detention order furnished to the detenu impairs the detenu's right to make an effective representation guaranteed by Article 22(5) of the Constitution of India? Having reflected over it our answer is in the

negative.

12. A perusal of Article 22(5) would show that an authority making a detention order is under an obligation to communicate to the detenu the grounds on which the order has been made and to afford him the earliest opportunity of making a representation against the detention order. It is obvious that since the detention order is founded on grounds of detention, in the absence of the latter the detenu would not be able to exercise his fundamental right guaranteed by Article 22(5) of Constitution of India, of making a representation at the earliest opportunity. It is also obvious that the detenu would only be able to exercise his said right if copy of the grounds of detention are furnished to him in a language known to him.

13. From a bare perusal of Article 22(5) it is seen that the authority making the order shall communicate such person the 'grounds' on which the order has been made and shall afford him earliest opportunity of making a representation. In the present case, it is seen that, the grounds of detention have been communicated to the detenu at the earliest. Infact, no grievance has been raised before us that the grounds have not been supplied to the detenu at the earliest.

The grounds of detention clearly show that the order of detention has been issued with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of Public Order. The translation of the grounds of detention in Hindi clearly show that the translation of the words "Public Order" is correct at all places. No grievance has been raised that in the grounds of detention the term "Public Order" has not been correctly translated. Thus, Article 22(5) of the Constitution of India has not been breached i.e. there is no violation of Article 22(5). The averments in the grounds of detention clearly show that the detenu is being detained in order to maintain public order. There is no case of any confusion arising in the mind of the detenu as to the reasons for which he is being detained.

14. A Division Bench of this Court consisting of S.K.Desai and V.V.Kamat, JJ., in **Criminal Writ Petition No.561/1989, Shaikh Ahme Kasim Shivkar Vs. The State of Maharashtra** decided on 21-7-1989, in para 4 has held that the detention order is not to be read in isolation but its legality and propriety has to be adjudicated after taking a composite view of the detention order and the grounds of detention.

. We are in respectful agreement with the ratio laid down in the said case. In the instant case we find that both in the grounds of detention in English and in the copy of the Hindi translation of the grounds of detention supplied to the detenu it has been mentioned that the detaining authority was subjectively satisfied that the detenu was acting in a manner prejudicial to the maintenance of public order and hence it was imperative to detain him under the MPDA Act.

. Hence in our view merely because in the Hindi translation of the detention order the word 'public' has not been mentioned, the detenu's right to make an effective representation under Article 22(5) of the Constitution of India would not be impaired.

15. In respect of the word 'public' not being translated in the Hindi translation of the order of detention, Mr.Mhaispurkar learned APP for the State, has placed reliance on the decision of this Court in the case of **"Narayan Ganpat Wadekar Vs. M.N.Singh and Ors., reported in 2001(2) Mh.L.J. 846"**. In the said case, in the Marathi translation of the order of detention the words, "acting in any manner prejudicial to the maintenance of Public Order" had not been

mentioned. This Court held that even though these words were not mentioned in the Marathi translation, the detenu's right to make an effective representation under Article 22 (5) of the Constitution of India would not be impaired. In the present matter, only the word 'public' remained to be translated in the order of detention. In such case as far as the State is concerned, the present matter stands on a much better footing than the case of Narayan Wadekar. Thus the contention of Mr.Tripathi in this regard must fail.

16. Mr.Tripathi has further submitted that besides the words "Public Order" which have been wrongly translated in the detention order, in the grounds of detention also there are certain errors in translation which have affected the right of the detenu to make an effective representation. Mr.Tripathi has pointed out that part of Para 3 of the grounds of the detention has been wrongly translated. The said portion which appears in English in the grounds of detention is as under :

"3. Your involvement in the recent past is noticed in the following incidents, which shows continuance of your tendencies and inclination towards crime with utter disregard to the existing law of the land. **.."**

. Mr.Tripathi contended that the said portion is wrongly translated. We have perused the translation and we find no error in the translation of the said portion in the grounds of detention so as to impair the right of the detenu to make an effective representation. Thereafter, Mr.Tripathi has pointed out that in Para 4 of the grounds of detention, there are errors in translation. So also, in Para 5 there is an error in translation. We have read Paras 4 & 5 of grounds of detention as well as the translation thereof, and we find that the detenu has been conveyed the true and correct meaning of Paras 4 & 5 in the translation. The translation is such that the detenu could make an effective representation and it cannot be said that his right to make an effective representation was impaired in any manner. For the said reasons, we reject the second submission also.

17. In the result, this Petition is dismissed and rule is discharged.

(D.G.DESHPANDE, J.)

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(SMT.V.K.TAHILRAMANI, J.)